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July 8, 2019

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Crown Castle Fiber LLC v. Commonwealth Edison Company,
Proceeding Number 19-169
Bureau ID Number EB-19-MD-004

Ms. Dortch:

Pursuant to 47 C.F.R. § 1.729(e), Crown Castle Fiber LLC submits the attached Opposition to Commonwealth Edison Company's Motion to Hold Proceedings in Abeyance filed in the above-referenced proceeding.

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Cc: Service List

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

CROWN CASTLE FIBER LLC, *Complainant*, v. COMMONWEALTH EDISON COMPANY, *Respondent*.	Proceeding Number 19-169 Bureau ID Number EB-19-MD-004

OPPOSITION TO RESPONDENT'S MOTION TO HOLD PROCEEDINGS IN ABEYANCE

Crown Castle Fiber LLC ("Crown Castle"), by and through undersigned counsel, and pursuant to 47 C.F.R. § 1.729(e), opposes Respondent Commonwealth Edison Company's ("ComEd") Motion to Hold Proceedings in Abeyance.

I. COMED'S MERITLESS MOTION TO DISMISS IS NOT GROUNDS TO HOLD THESE CASES IN ABEYANCE

Fundamentally, the sole basis for ComEd's Motion is its assertion that the Commission lacks jurisdiction, and as a result, that ComEd will succeed on its parallel Motion To Dismiss. Even ComEd's sole "public interest" argument in support of its Motion is a single, conclusory sentence that holding the matters in abeyance would be in the public interest because the parties and the Commission will not have to expend resources in a proceeding that ComEd incorrectly believes will be dismissed.[1] To the contrary, the Commission has jurisdiction over these cases,

[1] ComEd Motion to Hold Proceedings in Abeyance p. 2.

and a delay in the above-referenced proceeding would *harm* the public interest and irreparably harm Crown Castle.

First, ComEd's essentially sole reliance on the fact that it has filed a Motion to Dismiss as support for its Motion to Hold Proceedings in Abeyance is misplaced. The Commission has explicitly rejected the proposition that filing a motion to dismiss, by itself, is grounds to suspend the case. In the Rules Consolidation Order, although the Commission ultimately allowed for motions to dismiss, it stated, "[w]e *emphasize*, however, that *the mere filing of a motion to dismiss all or part of a complaint does not serve to suspend the pleading requirements under the rules*."[2] As a result, ComEd cannot simply point to its Motion to Dismiss as grounds for abeyance.

In this case, that point is particularly critical because ComEd's Motion to Dismiss is meritless. Crown Castle will not repeat all of the points in its simultaneously-filed Opposition to ComEd's Motion to Dismiss, but incorporates them by reference. In summary, the Illinois Commerce Commission ("ICC") has *not* "issued and made effective rules" governing attachments by telecommunications providers to electric company poles, as required by 47 U.S.C. § 224(c)(3). Recognizing that, the ICC has effectively amended its certification by informing the Commission in writing that the ICC has not adopted such rules, and "therefore lacks regulatory authority over attachments by telecommunications companies to poles owned by electric utilities."[3] Accordingly, under Section 224(c)(3) and as repeatedly recognized by the

[2] *In re Amendment of Procedural Rules Governing Formal Complaint Proceedings Delegated to the Enforcement Bureau*, Report and Order, EB Docket No. 17-245, 33 FCC Rcd. 7178, ¶ 14 (July 18, 2018) (emphasis added).

[3] A copy of the ICC 2018 Notice was attached to *Crown Castle Fiber LLC v. ComEd*, Proceeding No. 19-169, Complaint Exhibit B; *Crown Castle Fiber LLC v. ComEd*, Proceeding No. 19-170, Complaint Attachment C.

Commission, jurisdiction over this dispute reverts to this Commission.[4]

II. HOLDING THE CASES IN ABEYANCE WILL HARM THE PUBLIC INTEREST

ComEd's "public interest" grounds for holding these cases in abeyance is particularly erroneous. Further delay of Crown Castle's ability to deploy its facilities will significantly and irreparably harm the public. The Commission has recognized that "[o]btaining access to poles and other infrastructure is critical to deployment of telecommunications and broadband services. Therefore, to the extent that access to poles is more burdensome or expensive than necessary, ***it creates a significant obstacle to making service available and affordable.***"[5] In 2011, the Commission adopted the timeline rules that are the basis of one of Crown Castle's claims precisely because "lack of reliable, timely, and affordable access to physical infrastructure—particularly utility poles—is often a significant barrier to deploying wireline and wireless services."[6]

As recently as its August 2018 One Touch Make Ready Order, the Commission also recognized that "[p]ole access . . . is essential to the race for 5G because mobile and fixed wireless providers are increasingly deploying innovative small cells on poles and because these

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[4] *See, e.g.,, Implementation of Section 703(e) of the Telecommunications Act of 1996,* First Report and Order, 11 FCC Rcd 15499, ¶ 1240 (Aug. 8, 1996); *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996,* Report and Order, CS Docket No. 97-151, 13 FCC Rcd 6777, 6781 ¶ 6 n.20 (Feb. 6, 1998); *In the Matter of Implementation of Section 703(e) of the Telecommunications Act of 1996,* Notice of Proposed Rulemaking, CS Docket No. 97-151, 12 FCC Rcd 11725, 11727 ¶ 5 n.13 (Aug. 12, 1997)

[5] *Implementation of Section 224 of the Act; A Nat'l Broadband Plan for Our Future,* Report and Order and Order on Reconsideration, WC Docket No. 07-245; GN Docket No. 09-51, 26 F.C.C. Rcd. 5240, ¶ 6 (Apr. 7, 2011) (emphasis added).

[6] *Id.* ¶ 3.

wireless services depend on wireline backhaul."[7] It is clear that 5G infrastructure deployment will undoubtedly benefit the public:

> Supporting the deployment of 5G and other next-generation wireless services through smart infrastructure policy is critical. Indeed, upgrading to these new services will, in many ways, represent a more fundamental change than the transition to prior generations of wireless service. 5G can enable increased competition for a range of services--including broadband--support new healthcare and Internet of Things applications, speed the transition to life-saving connected car technologies, and create jobs. It is estimated that wireless providers will invest $ 275 billion over the next decade in next-generation wireless infrastructure deployments, which should generate an expected three million new jobs and boost our nation's GDP by half a trillion dollars. ***Moving quickly to enable this transition is important***, as a new report forecasts that speeding 5G infrastructure deployment by even one year would unleash an additional $ 100 billion to the U.S. economy. Removing barriers can also ensure that every community gets a fair shot at these deployments and the opportunities they enable. [8]

In the One Touch Make Ready Order, the Commission recognized that "[n]ow, more than ever, access to this vital infrastructure ***must be swift***, predictable, safe, and affordable. . . ."[9]

Unimpeded pole access is critical for Crown Castle (a) to make telecommunications services affordable and (b) to support competitive, next-generation deployment. ComEd's "red tag" practice, its inability to process pole attachment applications within the Commission's timeframes, and its excessive pole attachments rates have all made pole access "more

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[7] *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84; WT Docket No. 17-79, 33 FCC Rcd. 7705, ¶ 1 (Aug 3. 2018) ("*One Touch Make Ready Order*").

[8] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Inv.*, Declaratory Ruling and Third Report and Order, WT Docket Nos. 17-79; 17-84, 33 FCC Rcd. 9088, ¶ 2 (Sep. 27, 2018) (emphasis added).

[9] *One Touch Make Ready Order* ¶ 1 (emphasis added).

burdensome or expensive than necessary" and have been a "significant obstacle to making service available and affordable." ComEd's unlawful behavior has, without question, hindered Crown Castle's pole access, and, therefore, thwarted its ability to provide services that benefit the public. ComEd's practices must end as soon as possible.

Not only have ComEd's practices harmed the public interest, but they have irreparably harmed Crown Castle. These practices have not only imposed a significant financial burden Crown Castle, they have jeopardized and irreparably harmed Crown Castle's goodwill and relationships with its customers.[10] Until Crown Castle's claims are resolved, the delays and unjust and unlawful costs will continue to thwart Crown Castle's timely deployment of its network in the Chicago area.

III. CONCLUSION

Accordingly, the Commission should deny ComEd's Motion to Hold Proceedings in Abeyance and should not alter the existing schedule for Proceedings 19-169 and 19-170. Indeed, Crown Castle supports prompt resolution of ComEd's Motion to Dismiss.

[10] It is well recognized that injuries to a company's competitive position and customer goodwill are intangible and irreparable by monetary damages. *See, e.g., General Mills, Inc. v. Kellogg Co.*, 824 F.2d 622, 625 (8th Cir. 1987); *Brennan Petroleum Prods. Co. v. Pasco Petroleum Co.*, 373 F. Supp. 1312, 1316 (D. Ariz. 1974); *Interphoto Corp. v. Minolta Corp.*, 417 F.2d 621 (2d Cir. 1969); *Continental Cablevision of Cook County, Inc. v. Miller*, 606 N.E.2d 587, 596 (Ill. App. Ct. 1992), *appeal denied*, 612 N.E.2d 512 (Ill. 1993); *American Tel. and Tel. Co. v. Village of Arlington Heights*, 528 N.E.2d 1000, 1004 (Ill. App. Ct. 1988), *appeal denied*, 535 N.E.2d 398 (Ill. 1988); *Allied Mktg. Group, Inc. v. CDL Mktg., Inc.*, 878 F.2d 806, 810 (5th Cir. 1989); *Body Support Sys., Inc. v. Blue Ridge Tables, Inc*, 934 F. Supp. 749, 757-58 (N.D. Miss. 1996) (citing *Allied Marketing*); *Air Transp. Int'l LLC v. Aerolease Fin. Group, Inc.*, 993 F. Supp. 118, 123 (D. Conn. 1998); *Dunkin' Donuts, Inc. v. Dowco, Inc.*, 1998 U.S. Dist. Lexis 4526, *6-7 (N.D.N.Y. Mar. 31, 1998); *Ahava (USA), Inc. v. J.W.G., Ltd.*, 250 F. Supp.2d 366, 371 (S.D.N.Y. 2003).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 8, 2019, I caused a copy of the foregoing Opposition to Respondent's Motion to Hold Proceedings In Abeyance to be served on the following (service method indicated):

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